

## REMARKS/ARGUMENTS

This Amendment and Response is promptly filed to place the above-referenced case in condition for immediate allowance.

The status of the claims is as follows:

Cancelled: None;

Amended: 15 and 20;

Added: None; and

Currently outstanding: 1-53.

No new matter has been added to the application.

From the outstanding Office action, Claims 20-22 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite while Claims 20-23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Thai.

Claims 15 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Feder.

Claims 17-19 and 24 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form.

Claims 1-14 and 25-53 were allowed.

Reconsideration is respectfully requested in light of the foregoing amendments and the following comments.

Applicants have amended the Claims to reflect additional distinguishing subject matter and to better define the Claims. No narrowing amendment to conform with statute has been made in the application by the amendments to the claims.

Claims 15 and 16 have been amended to further set forth the operation of the inverted bottle type fluid delivery system. While this fluid delivery system automatically maintains a fluid level, it does so in a valveless manner. Note should be taken that the automatic maintenance of the fluid level is done on a valveless basis and the presence of a cutoff valve or otherwise does not effect this articulation of the claimed subject matter. The addition of a valve would not effect the automatic operation of the fluid delivery system for if such a valve were present, if the valve were open, the delivery system would operate automatically while if the valve was closed, the fluid delivery system would not operate.

Additionally, the fluid delivery system includes a container to which the fluid delivery system restricts, but does not absolutely prevent, airflow. This ability to restrict airflow to the liquid bubble solution reservoir enables the automatic operation of the fluid delivery system and allows the automatic maintenance of a fluid level.

The Examiner indicated the case of In re Venner, 120 USPQ 192 stands for the proposition that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. The Venner case relies upon the case of In re Rundell. 18 C.C.P.A. 1290, 1291; 48 F2d 958, \_\_\_; 9 U.S.P.Q. 220, \_\_\_ (C.C.P.A. 1931) for this proposition. The Rundell case stands for a proposition that is not properly characterized by the Venner case. In Rundell, the court stated that, "Appellant argues that his rejected claims rest upon an automatic mechanism. The mere statement that a device is to be operated automatically instead of by hand, without a claim specifying any particular mechanism, is not a statement of an invention. [citations omitted]" In re Rundell. 18 C.C.P.A. 1290, 1291; 48 F2d 958, \_\_\_; 9 U.S.P.Q. 220, \_\_\_ (C.C.P.A. 1931)

With the amendments to Claim 15, applicants no longer “broadly” provide automatic means to replace manual activity. Instead, Applicants provide specific means that are well articulated and do not merely state that the operation is “automatic.” As a result, Claim 15 is believed to be patentable over the Feder reference as are those claims depending upon Claim 15.

Claim 20 has been amended to both overcome the rejection based on 35 U.S.C § 112, second paragraph, (by including the terminology suggested by the Examiner) as well as to overcome the rejection based on 35 U.S.C. § 102(b) indicating that Claim 20 is anticipated by the Thai reference.

In Claim 20 as amended, the membrane forming member now adapted to intermittently engage the bubble loop due to the air pressure from the fan. No such feature is present in the Thai reference as any intermittent engagement into a liquid reservoir does not arise from air pressure from a fan. Instead, in the Thai reference, such intermittent dipping occurs manually.

The Examiner has also cited a number of patents and publications as pertinent to the presently claimed invention. Since none of these have been relied upon as a reference against Applicants' claims, no further comment is deemed necessary.

In view of the above, the Examiner is respectfully requested to reconsider his position in view of the remarks made herein and the structural distinctions now set forth. The Examiner's rejections of the outstanding claims are believed to no longer apply. It is now believed that this application has been placed in condition for allowance, and such action is respectfully requested. Prompt and favorable action on the merits is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The statements made herein with respect to the disclosures in the cited references represent the present opinions of the undersigned attorney. In the event that the Examiner disagrees with any of such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective references providing the basis for a contrary view.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicants invite the Examiner to contact Applicants' representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicants respectfully request the Examiner to pass the application on to

///

///

///

allowance. It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicants' Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: May 20, 2004



Donald M. Cislo

Reg. No. 22,060

Tel.: (310) 451-0647 x123

DMC/ASJ/cdh

Enclosures

Acknowledgement Postcard

CISLO & THOMAS LLP  
233 Wilshire Boulevard, Suite 900  
Santa Monica, California 90401  
Tel: (310) 451-0647  
Fax: (310) 394-4477  
Customer No.: 25,189  
www.cislo.com

t:\01-9936\reply oa final.9936 demars vertical bubble.doc